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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/896,388	06/28/2001	Joachim P. Walser	020431.0755	1011
53184	7590	12/18/2006	EXAMINER	
i2 TECHNOLOGIES US, INC. ONE i2 PLACE, 11701 LUNA ROAD DALLAS, TX 75234			SHERR, CRISTINA O	
			ART UNIT	PAPER NUMBER
			3621	

DATE MAILED: 12/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/896,388

Applicant(s)

WALSER ET AL.

Examiner

Cristina Owen Sherr

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5,7-13 and 15-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,7-13 and 15-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This communication is in response to applicant's amendment filed September 6, 2006. Claim 23 has been amended.
2. Claims 1-5, 7-13, and 15-25 are currently pending in this case.

### ***Response to Arguments***

3. Applicant's arguments filed September 6, 2006, with respect to the Section 112, par 2 rejections of claims 1-5, 7-13, and 15-25 have been fully considered but they are not persuasive. The term "optimal", a relative a vague term appears in independent claims 1, 9, 17, and 25. Thus the Section 112 rejection of claims 1-5, 7-13, and 15-25 is upheld.
4. Additionally, it is unclear what is an "optimal path." "Optimal path" to one person having ordinary skill in the art may be x while "optimal path" to another person having ordinary skill in the art may be y. Because "optimal path" is subjective to each person, the metes and bounds of the claims cannot be objectively determined.
5. It is the Examiner's position that if the scope of the claim is indefinite on its face, the claim is indefinite. "If the scope of the invention sought to be patented is unclear from the language of the claim, a second paragraph rejection will properly lie." *In re Wiggins*, 488 F.2d 538, 179 USPQ 421, 423 (CCPA 1973) (citations and quotations omitted).
6. The Examiner finds that because the claims are indefinite under 35 U.S.C. §112 2<sup>nd</sup> paragraph, it is impossible to properly construe claim scope at this time. See *Honeywell International Inc. v. ITC*, 68 USPQ2d 1023, 1030 (Fed. Cir. 2003) ("Because

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the claims are indefinite, the claims, by definition, cannot be construed.”). However, in accordance with MPEP §2173.06 and the USPTO's policy of trying to advance prosecution by providing art rejections even though these claim are indefinite, the claims are construed and the art is applied *as much as practically possible*.

7. With respect to the section 103 rejections of the claims, Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-5, 7-13, and 15-25 rejected under 35 U.S.C. 103(a) as being unpatentable over Maeda et al (US 5,377,095).

10. Regarding claim 1 –

Maeda discloses a method for generating a price schedule for one or more products, the method comprising:

generating a transition graph comprising a plurality of paths, each path comprising a plurality of states, each state having a price value, an inventory value, and a state value, the transition graph being generated by repeating the following for a plurality of stages until a final stage is reached (e.g. fig 9 col 6 ln 48-58);

determining the price value of a successor state (e.g. fig. 9);

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calculating the inventory value of the successor state using the price value and the inventory value of a predecessor state (e.g. col 1 ln 30 – col 2 ln 35); and

calculating the state value of the successor state using the price value and the inventory value of the predecessor state (e.g. col 1 ln 40-50);

selecting an optimal path according to the state values of the states; and determining a price schedule from the optimal path (e.g. col 2 ln 2-22).

11. It would be obvious to one of ordinary skill in the art to adapt Maeda to obtain the instant application in order to achieve greater flexibility in pricing according to the market.

12. Regarding claims 2-5-

Maeda discloses a method comprising quantizing the inventory value of each successor state; further comprising quantizing the price value of each successor state; wherein selecting the optimal path according to the state values comprises determining a state at the final stage having an optimal state value; and determining a path comprising a state of an initial stage and the state having the optimal state value; and further comprising eliminating a successor state in response to a constraint (e.g. col 12 ln 30-40). As above, rather than “inventory” Maeda uses “cost”. Nevertheless, these terms are functionally equivalent in the context of the invention.

13. As above, it would be obvious to one of ordinary skill in the art to adapt Maeda to obtain the instant application in order to achieve greater flexibility in pricing according to the market.

14. Regarding claims 7-8 –

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Maeda discloses a method wherein each state has a certainty value; and selecting the optimal path comprises determining a state at the final stage having a certainty value of a predetermined value; further comprising: defining a plurality of locations; estimating a demand forecast for the locations; calculating an expected number of unrealized sales at each location; adjusting the demand forecast in response to the expected number; determining a sales forecast from the demand forecast; and adjusting the inventory value of the successor state in response to the sales forecast (e.g. col 2 ln 3-17).

15. As above, it would be obvious to one of ordinary skill in the art to adapt Maeda to obtain the instant application in order to achieve greater flexibility in pricing according to the market.

16. Claim 9-13 and 15-25 are rejected under the same criteria as claims 1-5 and 7-8.

17. Examiner's note: Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant.

Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may be applied as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention as well as the context of the passage as taught by the prior art or disclosed by the examiner.

### ***Conclusion***

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cristina Owen Sherr whose telephone number is 571-

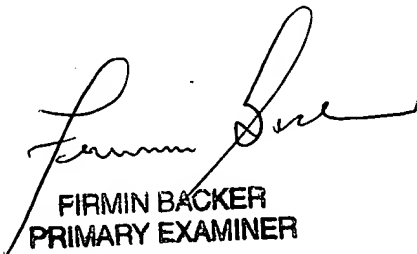
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272-6711. The examiner can normally be reached on 8:30-5:00 Monday through Friday.

19. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew J. Fischer can be reached on 571-272-6779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

20. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Cristina Owen Sherr  
Patent Examiner, AU 3621

  
FIRMIN BACKER  
PRIMARY EXAMINER